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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

FREDRICK M. BLAU, et al., individually and
on behalf of all others similarly situated,

Plaintiffs,

v.

AT&T MOBILITY, a Delaware corporation;
AT&T INC., a Delaware corporation,

Defendants.

Case No. CV 11-00541 CRB

**NOTICE OF WITHDRAWAL OF
DEFENDANT AT&T INC.'S MOTION
TO DISMISS FIRST AMENDED
COMPLAINT FOR LACK OF
PERSONAL JURISDICTION**

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1 **PLEASE TAKE NOTICE** that defendant AT&T Inc. hereby withdraws its pending
2 motion to dismiss the First Amended Complaint for lack of personal jurisdiction (Dkt. No. 36).

3 AT&T Inc. does not concede that this Court possesses personal jurisdiction over it. But
4 because of the burdens that jurisdictional discovery and further briefing would impose on the
5 Court and the parties—and because, for the reasons we discuss below, defendant AT&T Inc. is
6 entitled to compel all plaintiffs to resolve their disputes with it in arbitration on an individual
7 basis—AT&T Inc. has concluded that it would be more efficient to dispense with its personal
8 jurisdiction motion.

9 As the Court is aware, defendant AT&T Mobility LLC (“ATTM”) moved to compel
10 arbitration of the disputes of plaintiffs Blau, Stern, and McElrath (Dkt. No. 38), and explained
11 that defendant AT&T Inc. would likewise seek to invoke ATTM’s arbitration agreement if the
12 Court were to conclude that it has personal jurisdiction over AT&T Inc. In its October 21, 2011
13 Order (Dkt. No. 64), the Court indicated that it would defer ruling on whether ATTM and AT&T
14 Inc. are entitled to compel arbitration until first addressing whether personal jurisdiction exists
15 over defendant AT&T Inc. The Court also afforded plaintiffs an opportunity to undertake
16 jurisdictional discovery. Subsequently, plaintiffs propounded discovery requests that—in our
17 view—are excessive and overly burdensome. Rather than litigating over the propriety of those
18 discovery requests—and thus further increasing the costs to both parties and the burdens on the
19 Court—AT&T Inc. is withdrawing its personal jurisdiction motion.

20 Many courts have taken a similar approach, recognizing that when a defendant objects to
21 both venue and personal jurisdiction, the interests of judicial economy are better served by
22 addressing the venue objections rather than constitutional questions related to jurisdiction. *See,*
23 *e.g., Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585, 589 (1991) (when determination of
24 proper venue by enforcement of forum-selection clause would be dispositive, “we need not
25 consider petitioner’s constitutional argument as to personal jurisdiction”); *see also Corbello v.*
26 *Devito*, 2008 WL 2097435, at *2 (E.D. Tex. May 19, 2008) (“where the venue issue renders the
27 personal jurisdiction problem moot, thus avoiding the need to address constitutional questions,
28 consideration of venue before personal jurisdiction is appropriate”). Here, AT&T Inc.’s

1 invocation of ATTM's arbitration agreement constitutes such an objection to venue based upon
 2 the parties' contractual choice of a non-judicial forum. *Cf. Scherk v. Alberto-Culver Co.*, 417
 3 U.S. 506, 519 (1974) ("[a]n agreement to arbitrate before a specified tribunal is, in effect, a
 4 specialized kind of forum-selection clause").

5 Indeed, another federal court recently has adopted a similar approach in a case involving
 6 AT&T Inc. In *Hancock v. American Telephone and Telegraph Co.*, 2011 WL 3628885 (W.D.
 7 Okla. Aug. 11, 2011)—which involved claims brought against AT&T Inc. and its subsidiaries—
 8 AT&T Inc. moved to dismiss for lack of personal jurisdiction and, in the alternative, joined in
 9 motions to compel arbitration and transfer venue filed by its subsidiaries. *Id.* at *2. The court
 10 resolved the arbitration and venue motions first in favor of AT&T Inc. and its affiliates, and
 11 because it "found the issues of venue and arbitration dispositive of the plaintiffs' claims against
 12 AT&T Inc.," declined to "consider[] this defendant's arguments regarding in personam
 13 jurisdiction, * * * or the plaintiffs' request that they be permitted to conduct discovery on
 14 jurisdictional issues." *Id.* at *2 n.7. Likewise, AT&T Inc.'s withdrawal of its personal
 15 jurisdiction motion clears a path for this Court to undertake a similar analysis here.

16 In addition, ATTM has recently learned that the fourth named plaintiff, Anthony Tran, is
 17 required to arbitrate his disputes as well. Specifically, a user of the account on which Tran
 18 obtains wireless service from ATTM recently accepted ATTM's terms of service—including its
 19 arbitration agreement—when purchasing new phones for use on the account. Because that
 20 agreement extends to all users of the account, Tran—like the other plaintiffs in this case—is
 21 obligated to resolve his disputes in arbitration. Thus, should Tran elect to file an amended
 22 complaint pursuant to the Court's October 28, 2011 Order (Dkt. No. 70), ATTM and AT&T Inc.
 23 intend to file a motion to compel him to arbitrate his claims.

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1 Accordingly, because all of the plaintiffs' disputes must be resolved in arbitration rather
2 than in court, there is no need to burden the Court (or the parties) with considering AT&T Inc.'s
3 personal jurisdiction motion further, and therefore AT&T Inc. hereby withdraws that motion.

4 DATED: November 28, 2011

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